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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,663	12/17/2001	A. C. Nicol	10557/263318	1779

30559 7590 05/01/2003

CHIEF PATENT COUNSEL
SMITH & NEPHEW, INC.
1450 BROOKS ROAD
MEMPHIS, TN 38116

EXAMINER

PHIOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/01/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,663

Applicant(s)

NICOL ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 04.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-33 are rejected under 35 U.S.C. 102(a) as being anticipated by Nicol et al (Final Report 1978).

With respect to claims 1 and 18 Nicol et al disclose modular prosthesis for at least partial replacement of a joint articulating surface of a bone comprising a head (FIG.5.1) having a first surface adapted to cooperate with a joint surface and a second surface adapted to cooperate with an elongate stem, the second surface comprising a recessed socket; an elongate stem (FIG.5.1, 5.3), a connecting member, as best seen in FIG.5.11, comprising a patirx member having a generally spherical surface attached to the second end of the stem; as best seen in FIG.5.11; a locking member, as best seen in FIG.7.3, adaptd to lock the head and the stem in a desired orientation; wherein the locking member retain the patirx member within the socket between the locking member and the head socket with a force sufficient to lock the patirx member securely and rigidly in place relative to the stem and the head, wherein the force is distributed around at least one ring of contact (FIG.6.5) between the patirx member and the locking member and at least one ring of contact between the patirx member and the head socket; as best seen in FIGS: 7.2,.3.

With respect to claims 2-17, Nicol et al discloses all the limitations, as set forth in pages 19-56, and as best seen in FIGS 4-7.

With respect to claim 19, Nicol et al disclose a system for surgical replacement of a joint articulating surface of a bone comprising a selection of implant stems of various lengths and diameters, each having a first end adapted to be received within the medullary canal of a resected bone and a second end adapted for attachment to a generally spherical ball and locking ring (FIG.5.1, 5.3), at least one patrix member having a generally spherical surface attached to the second end of an implant stem; as best seen in FIG.5.11; a selection of implants of various heights and diameters adapted to approximate the size and shape of the joint articulating surface requirement replacement each having a first surface adapted to cooperate with a correspondent joint surface and a second surface comprising a recessed socket for receiving the patrix member, wherein the socket is concentric to a generally cylindrical cavity; as best seen in FIGS: 5.1, 5.3; at least one locking member, as best seen in FIG.7.3, adapted to lock an implant stem selected in a desired orientation to form an implant prosthesis; wherein the locking ring is adapted to fit over the the second end of the implant stem and accommodate a portion of the patrix member and adapted to be received within the generally cylindrical cavity of the implant head; as best in FIGS 7.2,7.3 wherein the locking ring retains the patrix member within the head socket between the locking ring and the head socket with a force sufficient to lock the patrix member securely and rigidly in place relative to the stem and the head, wherein the force is distributed around at least one ring of contact (FIG.6.5) between the patrix member and the locking ring and

at least one ring of contact between the patrix member and the head socket; as best seen in FIGS: 7.2,.3; a selection of trial stems of various lengths and diameters corresponding to the lengths and diameters of the implant stems, each having a first end adapted to be received in the medullary canal of the resected bone and a second end attached to a patrix member having a generally spherical surface and a locking ring, wherein the patrix member of the trial stem comprises an axial bore for engaging a device for extracting an assembled trial prosthesis from a patient's bone, and wherein the locking ring of the trial stem comprises an external driving surface for engaging a driver; as set forth in page 57-64, and as best seen in FIGS: 9.1 –9.10; a selection of trial heads of various heights and diameters corresponding to the heights and diameters of the implant heads, each having a first surface adapted to cooperate with a corresponding joint surface comprising a recessed socket for receiving the patrix member of the trail stem and a concentric generally cylindrical cavity for receiving the locking ring wherein the trial head further comprises an axial bore extending through the head socket and generally cylindrical cavity for accommodating a device for extracting the assembled trial prosthesis from a patient's bone; as set forth in page 57-64, and as best seen in FIGS: 9.1 –9.10; a transfer device for assembling the head and stem of the implant prosthesis in the same orientation as the head and stem of the trial prosthesis after extraction of the trial prosthesis from the patient's bone; as best seen in FIGS 9.1-9.10.

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With respect to claims 20-32, Nicol et al discloses all the limitations, as set forth in pages 19-56, and as best seen in FIGS 4-7; as set forth in page 57-64, and as best seen in FIGS: 9.1 –9.10.

With respect to claim 33, the method steps, as set forth, would have been inherently carried out in the operation of the device, as set forth above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,989,294	11-1999	Marlow
5,702,457	12-1997	Walch et al.
6,203,575	03-2001	Farey
6,206,925	03-2001	Tornier
5,741,335	04-1998	Gerber et al.

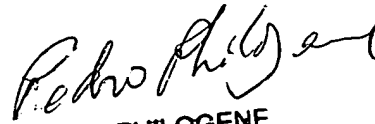
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 305-3591 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
April 28, 2003


PEDRO PHILOGENE
PRIMARY EXAMINER